

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1431 of 1999

in

SPECIAL CIVIL APPLICATION No 5276 of 1999

For Approval and Signature:

Hon'ble ACTG.CHIEF JUSTICE MR. C.K.THAKKAR and  
MR.JUSTICE K.M.MEHTA

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
  2. To be referred to the Reporter or not? : YES
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

-----  
KANTILAL MULJIBHAI PATEL

Versus

STATE OF GUJARAT

-----  
Appearance:

MR HARIN P RAVAL for Appellant

-----  
CORAM : ACTG.CHIEF JUSTICE MR. C.K.THAKKAR and  
MR.JUSTICE K.M.MEHTA

Date of decision: 22/10/1999

ORAL JUDGEMENT

(per Thakkar, Actg.C.J)

1. This appeal is filed against summary dismissal of Special Civil Application No.5276 of 1999 by the learned Single Judge on 14.10.1999.

2. The appellant-original petitioner being aggrieved and dissatisfied with the issuance of notice under Section 76B of the Gujarat Cooperative Societies Act, 1961 (hereinafter referred to as "the Act") filed the above petition. It appears that on 23rd July, 1999 ex-parte rule was issued and notice as to interim relief was made returnable on 21st August, 1999. In the meanwhile, ad-interim relief was granted not to remove the petitioner from the post of elected Director of the Unjha Sahakari Bank Limited. It appears that on 14.10.1999 the matter was shown on Board before the learned Single Judge and it was dismissed. Being aggrieved by the impugned order the present appeal is filed.

3. At the time of hearing of appeal, learned counsel for the appellant raised two contentions. Firstly, the learned counsel for the petitioner was not present when the matter was called out for hearing and was disposed of ex-parte and secondly on merits also, the learned Single Judge was not right in not allowing the petition which was entertained and rule was issued.

4. So far as the first contention is concerned, it was stated on the basis of Memo of Letters Patent Appeal as also in the light of two affidavits filed pages OO and MM of the Letters Patent Appeal wherein it was stated that the advocate whose appearance is shown for the petitioner was not present and that he was in the First Court (this court) where part-heard matters were going on. In another affidavit the colleague of the learned advocate for the appellant has stated that he was present in the court and that the learned advocate for appellant, in fact, whose appearance was shown in the judgment of the learned Single Judge was not present. It was also stated that he sought time, but the learned Single Judge refused and the matter was disposed of. In paras 31 to 35 of the memo of appeal, it was stated as under:

"31.The appellant submits that above mentioned matter was listed before the Honourable learned Single Judge (Coram: M.S.Shah,J) on urgent admission Board No.1 of 14.10.1999 at Sr.No.45. That even prior to 14.10.1999 two or three occasions priority was sought for without

informing the appellant or his advocate and the appellant had remained present, but, however, the matter could not be taken up. That on 14.10.1999 mention for priority was made for taking up of the matter on behalf of the respondents, that too without informing the appellant or his learned advocate on record.

32. That on 14.10.1999 the learned advocate appearing for the appellant above named and for the petitioner before the learned Single Judge Shri H.P.Raval was before the Honourable First Court (Coram: Acting C.K.Thakkar and Kamal Mehta,J) in group of Letters Patent Appeal being Letters Patent Appeal Nos 1028/99, 1029/99, 1030/99, 1031/99 and 1033/99. The said matters were over night part-heard matters and have as a matter of fact begun from 12.10.1999.

33. That petition was called out at about 3.00 p.m. before the learned Single Judge. It was called out for the first time at the said time before the learned Single Judge i.e. 4.00 p.m.

34. That a request was made to the learned Single Judge by Shri Amar D.Mithani, colleague of the learned Advocate appearing for the appellant-petitioner, seeking accommodation till Friday 2.45 p.m. and/or till Monday whichever is convenient to the Honourable Court on the ground that the learned Advocate was before the Honourable First Court in over night part heard matter and it was not possible for the learned advocate to have conducted the matter before the learned Single Judge in the present case. It was also pointed out by the learned Advocate Shri Amar D.Mithani that he was not aware of the facts of the case. It was also pointed out that after

2.45 p.m. on Friday the Honourable Court would not be available, and therefore, a day's accommodation be granted and a request was made to keep back also. However, the learned Single Judge refused all the said reasonable requests and straight away proceeded to pass judgment. That the learned advocate Shri Amar D.Mithani also requested the Honourable Court to grant accommodation till next day. However, the learned Single Judge refused to even hear the learned advocate who was making such request and

proceeded straight away to pass the order without hearing the present appellant or the appellant's learned advocate on record in the very first round and Affidavit in support of the aforesaid averments of learned Advocate Shri Amar D.Mithani is filed herewith.

That an affidavit in support of the averments of the learned advocate on record that he was in fact before the Honourable Court at the time when the matter was called out before the Honourable Court is also filed herewith.

35. That despite the above mentioned position, the learned Single Judge has straight away proceeded to dismiss the matter and also refused to hear the learned advocate Shri Amar D.Mithani who went on repeating request by saying that the Honourable Court would not hear him and would pass usual order. That thereupon the learned advocate Shri Amar D.Mithani requested that the same order could be passed after hearing the Advocate on record. However, the learned Single Judge declined said request also and straight away proceeded to pass the order."

5. Now, if one reads the order passed by the learned Single Judge it is clear that appearance of the learned advocate is very much shown in "appearance". In para 2 of the judgment also the learned Single Judge specifically and unequivocally observed thus:

"The learned counsel for the petitioner, however, submits that in the facts and circumstances of the case, if the respondent authorities proceed to decide the matter and pass any order adverse to the petitioner and implement the same, the petitioner will be presented with a fait accompli and will not be in a position to obtain appropriate orders and, therefore, the petitioner may be protected for some time if any order adverse to the petitioner is passed".

6. The Honourable Supreme Court in State of Maharashtra vs Ramdas Shrinivas Naik AIR 1982 SC 1249 has clearly observed that "the court is bound to accept the statement of the judges recorded in the judgment. It can not allow the statement of the judges to be contradicted by statements at the Bar or by affidavit and other

evidence. If the judges say in their judgment that something was done, said or admitted before them, that has to be the last word on the subject. The principle is well settled that statements of fact as to what transpired at the hearing, recorded in the judgment of the court, are conclusive of facts so stated and no one can contradict such statements by affidavits or other evidence. If a party thinks that the happenings in court have been wrongly recorded in a judgment, it is incumbent upon the party while the matter is still fresh in the minds of the judges, to call the attention of the very judges who have made the record to the fact that the statement made with regard to his conduct was a statement that has been made in error. That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there."

7. In the instant case, not only the appearance of the learned advocate for petitioner was shown by the learned Single Judge but on argument said to have been put-forward before the learned Single Judge by the learned counsel was also dealt with by the learned Single Judge. It was urged that if the show cause notice would be proceeded with and order adverse to the petitioner would be passed, there would be a "fait accompli" and the petitioner would not be in a position to get protection. In the light of that submission, the learned Single Judge in the next para has observed that " without going into the merits of the contentions raised in this petition, it is directed that if the respondent authorities pass any order adverse to the petitioner pursuant to the show cause notice, the same shall not be implemented for a period of three weeks from the date of despatch of the decision to the petitioner by registered post with Ack.due".

8. The above order was passed by the learned single judge very recently, i.e. on 14.10.1999. We are on 22.10.1999. If there is an error appropriate course for the appellant is to approach the same judge who is available to set the record straight. Admittedly, no such application is filed. In the circumstances, in our opinion, it is not permissible for the learned advocate to contend and for us to accept that though the learned advocate for petitioner was not present and though no submission was made which is reflected in the penultimate para of the order, the observations have been made and limited interim relief was granted. We, therefore, cannot uphold the above contention and it is hereby rejected.

9. So far as merits are concerned, in our opinion, it cannot be said that the learned Single Judge has committed any error of law. It is no doubt true that if the notice is without jurisdiction and there is inherent lack of authority to issue it the petitioner can come for appropriate relief. In our opinion, however, in the light of facts stated by the learned single judge, the court was not inclined to allow the petition. At the same time, taking into consideration the fact that if the order is passed and implemented there will be miscarriage of justice. Considering that fact, the learned Single Judge issued direction that if the order is against the petitioner, it would not be implemented for some time. It cannot be said that the learned Single Judge has committed any error of law or of jurisdiction which deserves to be corrected in exercise of appellate powers.

10. We see no reason to interfere with the order passed by the learned Single Judge. The appeal deserves to be dismissed and is accordingly dismissed. No order as to costs.

22.10.1999 (C.K.THAKKAR,ACTG.C.J.)(K.M.MEHTA,J)